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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

QIN CHEN,

Petitioner,

v.

MICHAEL CHERTOFF, Secretary  
 of Department of Homeland Security;  
 EMILIO T. GONZALEZ, Director of the  
 U.S. Citizenship and Immigration Services;  
 CHRISTINA POULOS, Acting Director of  
 USCIS, California Service Center; and  
 ROBERT S. MULLER, Director  
 of Federal Bureau of Investigation,

Respondents.

No. C 07-2188-WDB

**FURTHER CASE MANAGEMENT  
 STATEMENT**

CMC Date: April 21, 2008

CMC Time: 1:30 p.m.

The petitioner, currently proceeding *pro se*, and respondents, by and through their attorneys of record, hereby jointly submit this further case management statement.

(1) On April 20, 2007, the petitioner filed this mandamus action, seeking an order compelling the United States Citizenship and Immigration Services (USCIS) to adjudicate her I-485 application to adjust her status to lawful permanent resident.

(2) The parties have filed cross-motions for summary judgment.

(3) On December 11, 2007, this Court issued an order: (a) stating that if this case is not rendered moot by agency action during the first few months of 2008, the Court denies the

respondents' motion for summary judgment; (b) declining to rule on petitioner's motion for summary judgment; (c) inviting the parties to engage in discovery on the issue of whether petitioner is in a group that is eligible for a visa now; (d) informing the petitioner that she may file a motion for summary judgment on this issue at any time before February 11, 2008, if she has developed sufficient evidence to support such a motion; (e) stating that if the petitioner has not filed a motion for summary judgment by February 11, 2008, and if USCIS has not by then made a decision on the I-485 application, then by February 19, 2008, the parties shall file a joint case management statement that appraises the Court of any relevant developments that have occurred between the date of the Court's order and now; (f) stating that if the petitioner's group is eligible for visas, or is about to become eligible for visas, it would issue a ruling on the pending motion for summary judgment; and (g) stating that if it is not clear whether petitioner's group is eligible for visas, then on February 26, 2008, the Court would conduct a case management conference.

(4) The petitioner has not propounded any discovery nor filed a motion for summary judgment.

(5) The respondents continue to maintain that the petitioner is in the Second Preference Category, for which visas are not currently available.

(6) On February 21, 2008, this Court granted the parties' stipulation to extend the date of the case management conference from February 26, 2008, to March 17, 2008.

(7) On March 13, 2008, this Court granted the parties' stipulation to extend the date of the case management conference from March 17, 2008, to April 21, 2008.

(8) The State Department's January Visa Bulletin stated that the priority date for Second Preference Chinese applicants will be January 1, 2003.

(9) The State Department's February Visa Bulletin stated that the priority date for Second Preference Chinese applicants will still be January 1, 2003.

(10) The State Department's March Visa Bulletin<sup>1</sup> stated that the priority date for Second

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<sup>1</sup>In the parties' stipulation to continue the case management conference, counsel for the respondents erroneously referred to the February Visa Bulletin, instead of the March Visa Bulletin.

1 Preference Chinese applicants will be December 1, 2003, an encouraging jump of 11 months.

2 (11) The State Department's April Visa Bulletin states that the priority date for Second  
3 Preference Chinese applicants remains at December 1, 2003. A copy of the State Department's  
4 April Visa Bulletin is attached as Exhibit A.

5 (12) The petitioner's name check is still pending with the FBI. However, on February 4, 2008,  
6 the USCIS issued a new policy regarding applications that have not been adjudicated due to the  
7 pendency of an FBI name check. This new policy is attached as Exhibit B. Under the new policy,  
8 "[w]here the application is otherwise approvable and the FBI name check request has been  
9 pending for more than 180 days, the adjudicator shall approve the I-485 . . . and proceed with card  
10 issuance."

11 (13) Accordingly, under the new USCIS policy, USCIS will be able to adjudicate the  
12 petitioner's I-485 once a visa number is available for the petitioner, even if the petitioner's name  
13 check is still pending.

14 (14) The parties ask this Court to delay ruling on petitioner's motion for summary judgment  
15 and to await information on plaintiff's availability for a visa in the State Department's May Visa  
16 Bulletin.

17  
18 Dated: April 7, 2008

Respectfully submitted,

19 JOSEPH R. RUSSONIELLO  
20 United States Attorney

21 /s/  
22 EDWARD A. OLSEN  
23 Assistant United States Attorney  
Attorneys for Respondents

24 Dated: April 7, 2008

25 /s/  
QIN CHEN  
Petitioner

**ORDER**

Pursuant to stipulation, IT IS SO ORDERED.

Date:

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WAYNE D. BRAZIL  
United States Magistrate Judge